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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,085	02/11/2004	Dilip Tapadiya	TAPADI.003C3	2366

20995 7590 05/28/2009
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EXAMINER

HANRAHAN, BENEDICT L

ART UNIT	PAPER NUMBER
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3761

NOTIFICATION DATE	DELIVERY MODE
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05/28/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com
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Office Action Summary	Application No. 10/776,085	Applicant(s) TAPADIYA, DILIP	
	Examiner BENEDICT L.C. HANRAHAN	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 122-126 and 128-134 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 122-126 and 128-134 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 January 2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/11/2004, 5/5/2006, 7/27/2006, 9/29/2006,</u> | 6) <input type="checkbox"/> Other: _____ |
| <u>1/12/2009</u> | |

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DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/12/2009 has been entered.

Claims Status

2. Claims 1-121 and 127 have been withdrawn. Claims 122-126 and 128-134 are pending. Claims 122-123 are original. Claims 124-126 and 128-133 are as previously presented. Claim 134 is new.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 122 and 124 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term “at least about” brings in two variables, and they are the “at least” and “about”. This causes the claim to be vague and indefinite, and the claim should be further limited.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 122-126, 128 and 130-133 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bryn et al. (US 5,582,165).

7. Regarding claim 122, Bryn et al. disclose a medical kit comprising a sterilized package 12 and 23 (Fig 1 and Figs. 10 and 11) (Col 2, lines 5-14) containing a sterilized length of suction hose 10 and 22 (Fig 1 and Figs. 10 and 11). Bryn et al. does not specifically disclose the suction hose having an inner diameter of at least about 8 millimeters. Mere changes in the relative size of an element are not sufficient to patentably distinguish a claimed invention over the prior art. See *Gardner v. TECSystems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device. MPEP § 2144.04. Furthermore, the claim does not claim a specific diameter but instead claims a number in general.

8. Regarding claim 123, Bryn et al. disclose the length of suction hose 27 (Fig 12) includes first and second ends, and first 14 and 20 (Fig 3) and second female 25 (Fig 12) adapters connected to the first and second ends, respectively.

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9. Regarding claims 124 and 128, Bryn et al. disclose that the first female adapter 14 and 20 (Fig 4) is configured to be connectable with an outlet of a suction device 10 and 20 (Fig 4).

Regarding the specific diameter, see Paragraph 5, above, for the discussion of claim 122.

10. Regarding claims 125 and 126, Bryn et al. disclose that the suction device 10 and 20 (Fig 4) comprises a hand-held wound aspiration device 10 (Fig 2).

11. Regarding claim 130, Bryn et al. disclose that the suction hose 10 and 22 (Fig 1 and Figs. 10 and 11) is configured to draw tissue and bone debris from a wound under vacuum.

Structurally, this hose meets all the limitations of the claimed suction hose.

12. Regarding claim 131-133, Bryn et al. disclose that the first connector 20 and 21 (Fig 11) is connected to a suction device 10 that may be held by the hand (See Fig 2).

13. Claims 129 and 134 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bryn et al. (US 5,582,165) in further view of Giard, Jr. et al. (US 2003/0062281).

14. Regarding claims 129 and 134, Bryan et al disclose all of the claimed elements including a sterilized package (Col 2, lines 5-14) but do not explicitly disclose that the suction hose is coiled inside the sterilized package. However, Giard, Jr. et al. disclose a packaging 12 (Fig 1A) for a medical collection device that includes a coiled tube 20 (Fig 1A). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the Bryan's reference, to include a coiled tube configuration, as suggested and taught by Giard, Jr. et al., for the purpose of providing a sterilized medical kit for compact and orderly storage.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BENEDICT L.C. HANRAHAN whose telephone number is (571)270-7854. The examiner can normally be reached on Monday-Friday, 8AM-5PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/BENEDICT L.C. HANRAHAN/
Examiner, Art Unit 3761

/Tatyana Zalukaeva/
Supervisory Patent Examiner, Art Unit 3761